



Legal and Ethical Issues in School Counseling Groups

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Legal and Ethical Guidelines and Decision Making

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Objectives



Understand the ASCA ethical codes



Identify legal obligations of a school counselor



Understand guiding principles for ethical decision making



Understand decision making models for addressing ethical questions



Apply ethical decision making model and ethical codes to resolve ethical dilemmas



Ethical Scenario

- ▶ A counselor in a new high school was trying to decide how she should inform all students of the meaning of confidentiality in counseling situations and give them information regarding the limits of confidentiality. She considered informing the students by including a section on the topic in the student handbook given to all students as they enrolled in the school. However, she decided that putting the information in the handbook was not a good idea because few students would actually read it, and that making an announcement at an assembly at the beginning of each academic year would be the best approach. By doing this, she will not need to review confidentiality every time she works with a student individually or in group.

Ethical Scenario

- ▶ A middle school counselor is seeing a sixth grader regularly in group because her parents are going through a contentious divorce and the process is very upsetting to the student. The student's English teacher approaches the counselor and asks whether anything is wrong with the student because she appears distracted in class, her grades have declined, and she is quieter than usual. The counselor explains that counseling relationships with students are confidential and that the counselor cannot disclose private information regarding the student.
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Ethics and ASCA Ethical Codes

Ethics Defined

- ▶ Standards of moral and professional conduct
- ▶ *Code of ethics*—a written ethical guideline followed by professionals
 - ▶ discourages inappropriate practice
 - ▶ protects recipient of services
 - ▶ promotes exemplary behavior





Ethical Codes: Group Activity

- ▶ Break up into small groups, go to <http://www.schoolcounselor.org/content.asp?contentid=173>, summarize codes.
- ▶ A. Responsibilities to Students (2 groups 1-6; 6-11)
- ▶ B. Responsibilities to Parents/Guardians
- ▶ C. Responsibilities to Colleagues and Professional Associates
- ▶ D. Responsibilities to the School and Community
- ▶ E. Responsibilities to Self
- ▶ F. Responsibilities to the Profession



Exceptions of Confidentiality and Privilege

- ▶ You do need to know that there are certain limits to what you can expect for confidentiality and privacy:
 - ▶ A risk of suicide or self harm
 - ▶ Disclosure of intent to harm another person or commit a crime
 - ▶ sexual abuse, physical abuse or other type of abuse or neglect of a child, elder citizen, or disabled citizen
 - ▶ Bring a law suit against me
 - ▶ Additional?

Group is a unique form of counseling in that it involves more than just a counselor and one student. Groups consist of several members. You need to be aware of limits to confidentiality and privilege that apply to group. While it is rare that group members choose to maliciously gossip about other members, they may talk about what happened in the group to outside persons. It will be encouraged and expected that members keep all that goes on in a group session confidential. It is important that you know the counselor cannot guarantee complete confidentiality of the other members. Ultimately, it is up to members to respect the need for confidentiality and to maintain it. Members will be expected to sign a contract agreeing to this confidentiality.





Legal

Legal Issues

Mandated Reporting

Duty to Warn

Negligence

Confidentiality

Parent Rights and Requests for Information (FERPA)

Student Rights (HIPPA)



Legal Issues: Mandated Reporting



- ▶ **Information to report to CPS**
 - ▶ Name, Address, Age and Sex of Child
 - ▶ Name and Address of Parent or Caretaker
 - ▶ How you became aware
 - ▶ Nature and Extent of jury, abuse, maltreatment or neglect
 - ▶ Actions taken to safeguard the child
 - ▶ Your name and address



Child Abuse and Neglect Training

- ▶ Visit http://www.vcu.edu/vissta/training/va_teachers/ to take a training on child abuse and neglect. This training will give you the skills and knowledge that you need to know in identifying and reporting child abuse and neglect. In the state of Virginia, educators are required to participate in this learning module. Once you complete the module, you can take the evaluation and receive a certificate of completion.
- ▶ You can also visit childabuse.org for links and documents on preventing abuse and identifying abuse.



Legal Issues: Duty to Warn

- ▶ Obligation to take action if client is a danger to self or others.
 - ▶ Suicide
 - ▶ Assault



Legal Issues: Negligence and Malpractice

- **Four elements must be present for negligence**
 - A duty must be owed by one person to another
 - The duty that was owed was breached
 - There must be sufficient legal causal connection between the breach of duty and the injury
 - Injury or damages must be present
- **Standard of care is the benchmark the courts use to determine the actions of the reasonably competent professional school counselor.**

Malpractice Behaviors often leading to legal entanglements :

Misrepresenting one's training
Failing to respect integrity and privacy
Using improper diagnosis and assessment
Collecting fees improperly
Libel and slander
Breach of contract
Failing to keep adequate records
Failing to provide informed consent
Providing poor advice



Legal Issue: Confidentiality and Privileged Communication



- ▶ In most states the school counselor-student relationship is **NOT** recognized as privileged
- ▶ Court order can compel a counselor to release information without client consent or face contempt of court.



Legal Issues: Parents Rights and School Information



- ▶ **Family Rights and Privileges Act of 1974 (Buckley Amendment)**
 - ▶ Parents have rights of access, waiver, challenge and privacy
 - ▶ Parents have right to inspect **all school records**
 - ▶ Parental consent required for testing or interventions
 - ▶ Personal logs and treatment records are not school records (if sole possession records criteria are met)
- ▶ **Parents must authorize release of information for minor children**
- ▶ **Counselors cannot keep information about minor children confidential from parents; except for certain issues in accordance with state laws.**



Support and Information

- ▶ School Attorney
- ▶ Private Attorney





Guiding principles

Guiding Principles: Kitchener (1984)

Autonomy

- Individual the freedom of choice and action
- Competence

Nonmaleficence

- Not causing harm to others

Beneficence

- Counselor's responsibility to contribute to the welfare of the client
- “to do good”

Justice

- Treating equals equally and unequals unequally but in proportion to their relevant differences

Fidelity

- Loyalty, faithfulness, and honoring commitments

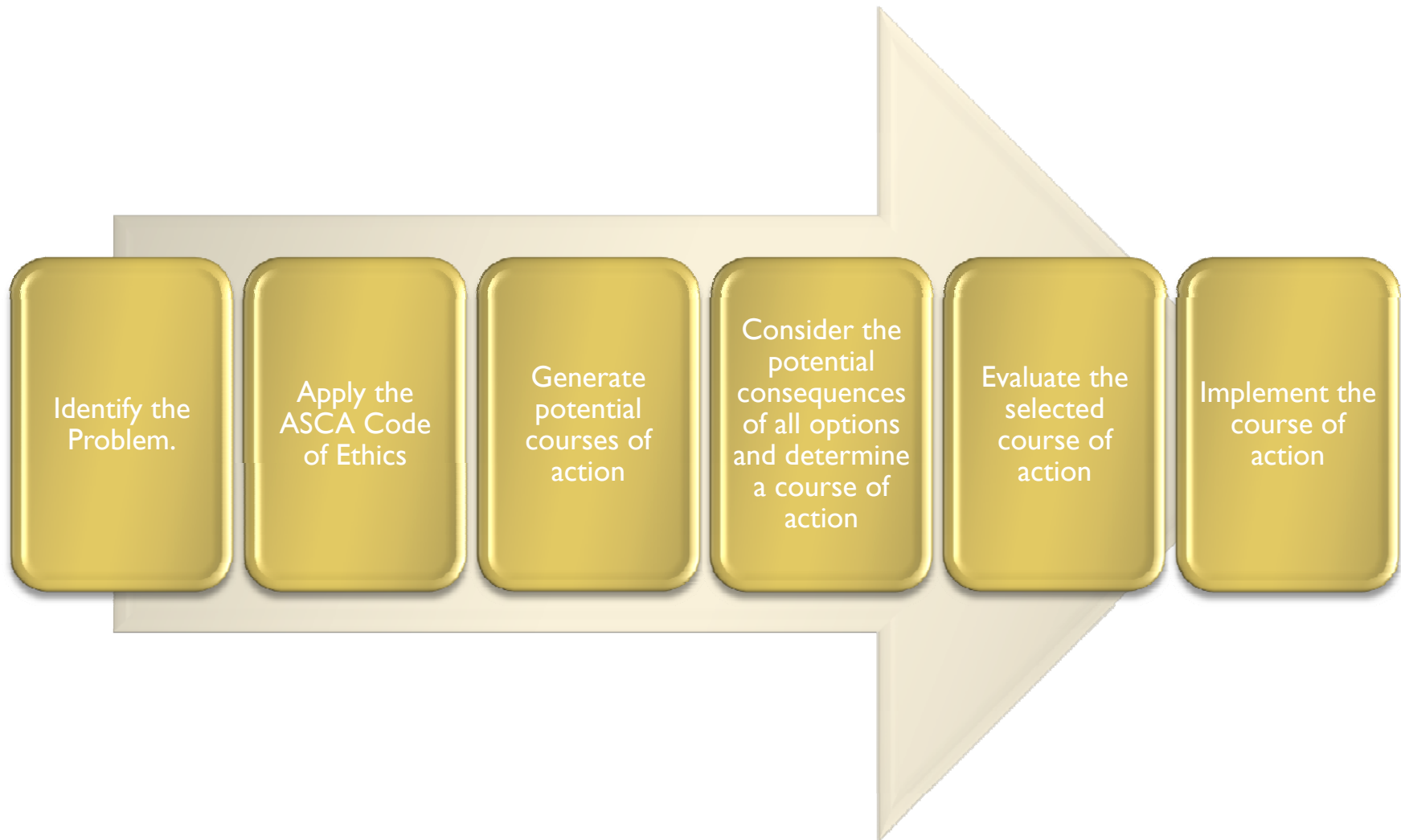


Ethical Decision Making Model

Dilemmas



Ethical Decision Making: ACA Model





Ethical Dilemmas

Ethical Scenario

- ▶ A counselor in a new high school was trying to decide how she should inform all students of the meaning of confidentiality in counseling situations and give them information regarding the limits of confidentiality. She considered informing the students by including a section on the topic in the student handbook given to all students as they enrolled in the school. However, she decided that putting the information in the handbook was not a good idea because few students would actually read it, and that making an announcement at an assembly at the beginning of each academic year would be the best approach. By doing this, she will not need to review confidentiality every time she works with a student individually or in group.

Ethical Scenario

- ▶ The mother of an enrolling elementary school student tells the counselor that if the child's father requests information from the counselor regarding their daughter, the counselor must not give him any information because the mother has custody of the child. The counselor explains that, unless the father's legal rights have been terminated (which is more than a custody order), the school has a policy of providing the same information to noncustodial parents as is given to custodial parents. When the mother offers a copy of the custody order to the counselor as proof that the father is not entitled to any information, the counselor asks the mother to see the principal regarding the matter.
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Case Study

A middle school counselor receives a call from the mother of a student the counselor has been seeing recently related to the student's reluctance to participate in group activities. The student has been talking to the counselor about his shyness, anxiety around peers, negative self-concept, and interest in developing more self-confidence. The mother tells the counselor that her son has told her he is seeing the counselor. The mother thanks the counselor for talking to her son, asks what her son has been talking about in the counseling sessions, and inquires as to whether there is any way in which she can be helpful. What should the counselor share? What if the child's father was calling, but the mother had custody?



Case Study: Curious Teacher

A middle school counselor is seeing a sixth-grader regularly because her parents are going through a contentious divorce and the process is very upsetting to the student. The student's English teacher approaches the counselor and asks whether anything is wrong with the student because she appears distracted in class, her grades have declined, and she is quieter than usual. What does the counselor do?



Case Study: The Case of the Two Counselors

A high school counselor has been seeing a student who is a senior on a regular basis after the student was referred for counseling after being disciplined several times for fighting with other students. At the third counseling session, the student informs the counselor that she sees a licensed professional counselor (LPC) in private practice weekly and has been in counseling with the LPC for about 6 months. What should the school counselor do?



Ethical Scenario

- ▶ A high school counselor secures permission from his principal to conduct group counseling sessions one night a week in an Internet chat room for students whose parents are going through a divorce. The principal asks the counselor to provide her with professional guidelines for counseling in this manner and to demonstrate how the procedures the counselor has developed comply with the professional standards. The counselor replies that since Internet counseling is so new, standards have not yet been adopted, but he assures the principal he will conduct the group sessions in a professional manner.





Informed in School Counseling

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Objectives



Define Informed Consent



Understand the role of
informed consent in school
counseling groups



Create an informed consent



Informed Consent Defined

- ▶ *Informed Consent*--to inform individual about the nature and goals of counseling, their right to privacy, the voluntary nature of participation and the complete freedom they have in following suggestions

A.2.a. Informed Consent- Clients have the freedom to choose whether to enter into or remain in a counseling relationship and need adequate information about the counseling process and the counselor. Counselors have an obligation to review in writing and verbally with clients the rights and responsibilities of both the counselor and the client. Informed consent is an ongoing part of the counseling process, and counselors appropriately document discussions of informed consent throughout the counseling relationship.

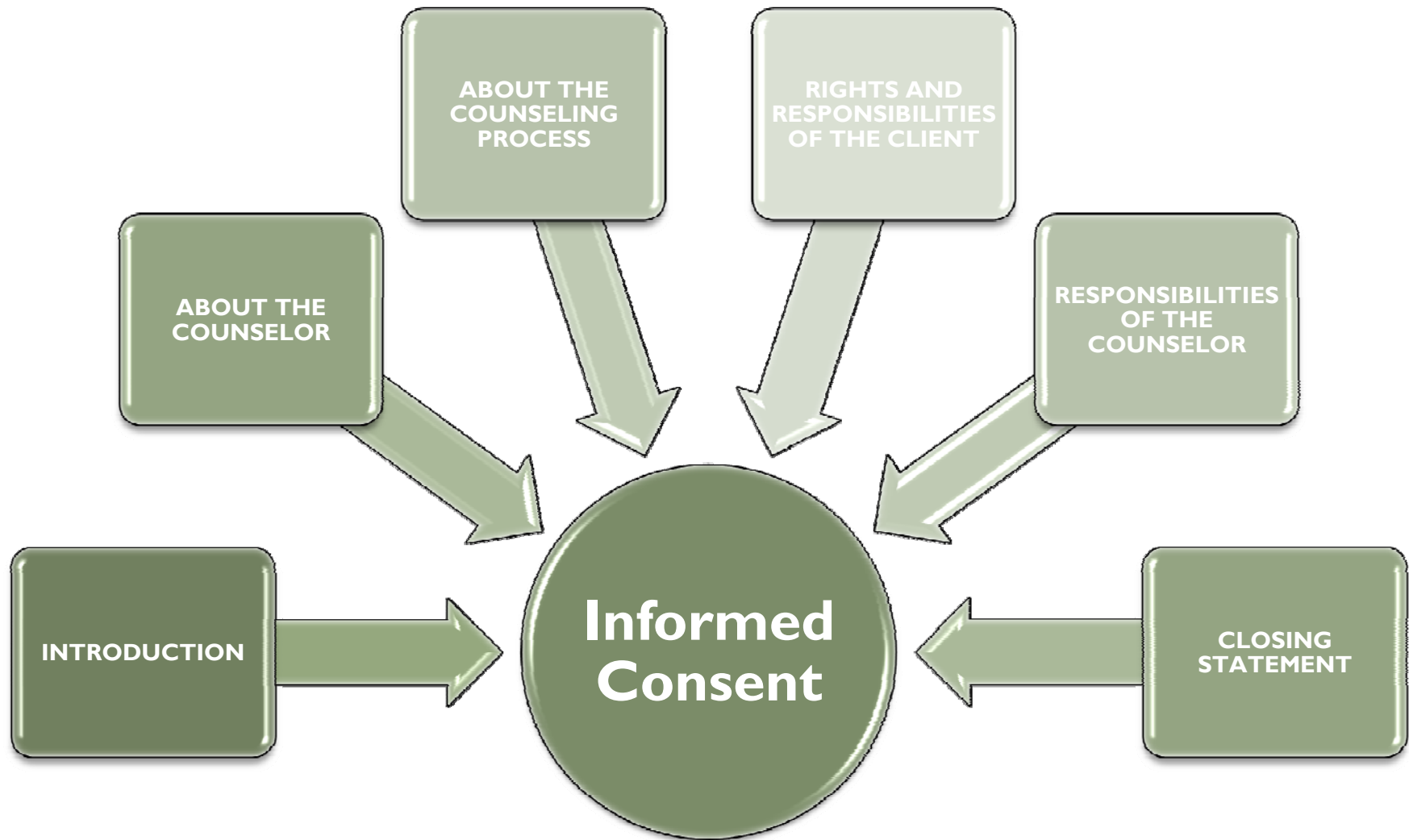


Information contained in an Informed Consent

A.2.a. Informed Consent. Counselors explicitly explain to clients the nature of all services provided. They inform clients about issues such as, but not limited to, the following: the purposes, goals, techniques, procedures, limitations, potential risks, and benefits of services; the counselor's qualifications, credentials, and relevant experience; continuation of services upon the incapacitation or death of a counselor; and other pertinent information. Counselors take steps to ensure that clients understand the implications of diagnosis, the intended use of tests and reports, fees, and billing arrangements. Clients have the right to confidentiality and to be provided with an explanation of its limitations (including how supervisors and/or treatment team professionals are involved); to obtain clear information about their records; to participate in the ongoing counseling plans; and to refuse any services or modality change and to be advised of the consequences of such refusal.



Components of an Informed Consent



Components of an Informed Consent

- ▶ **Introduction – brief information about the school counseling program**



Components of an Informed Consent

▶ **ABOUT THE COUNSELOR**

- ▶ **Credentials** – Indicate your education, training, experience, and any specialty credentials.
- ▶ **Licensing Regulations** – Indicate all relevant licensures you hold and the name, address, and phone number of the licensing board.
- ▶ **Supervisory Relationship** – Indicate any supervision you are receiving, the purpose of the supervision, and the supervisor's name, credentials, and phone number.
- ▶ **Ethical Guidelines** – Indicate the professional standards you adhere to and how the client can obtain a copy of the ethical guidelines (address, phone, web site)



Components of an Informed Consent

► **RIGHTS AND RESPONSIBILITIES OF THE CLIENT**

- **Confidentiality and Privilege** – Indicate that the client's personal information and information shared in the counseling session will be handled as confidential. Confidential and privileged information will be released to a third party upon the written consent of the client.
- **Exceptions of Confidentiality and Privilege** - The exceptions to confidential and privileged information are the following:
 - Indicate specific circumstances where there are exceptions to confidentiality and privilege in the counseling setting.
- **Counseling Records** – Indicate (list) how the records are kept and secured, for how long (check your state's requirements), and how they will be discarded.
- **Disputes and Complaints** – Indicate how you will resolve any disputes, and provide the necessary information for filing a complaint (licensing board, address, and phone number).



Components of an Informed Consent

► **RESPONSIBILITIES OF THE COUNSELOR**

- **Affiliation Relationship** –If you are in an agency/clinic, indicate your relationship with the clinic/agency where you are working (partner, contracted).
- **Colleague Consultation** – Indicate that in order to provide quality care, you may consult with other and that every effort will be made to protect the identity of the client.
- **Tape Recording or Videotaping of Sessions** – If you tape or video sessions, indicate the procedure you will follow which should include written consent, and what will happen to the tapes (where they will be kept and how they will be destroyed
- **Dual Relationships** – If you have a policy of not socializing with clients, indicate how you will maintain the professional relationship. Indicate your policy for how you handle meeting/seeing the client in a public setting (ex: allowing the client the choice of acknowledging you). If you have a policy on accepting gifts, clarify it here.



Components of an Informed Consent

- ▶ **Closing statement** – Make a statement indicating that this document has been read and explained.

Example: I have read the information above with the counselor. The counselor discussed each of the items and I understand the information that is contained in this document. I give my consent to the terms of this document and agree to enter into a counseling relationship.

Client's Signature _____ Date _____

Parent/Guardian's Signature _____ Date _____
(If client is a Minor)

I have discussed and explained the above information with the client.

Counselor's Signature _____ Date _____

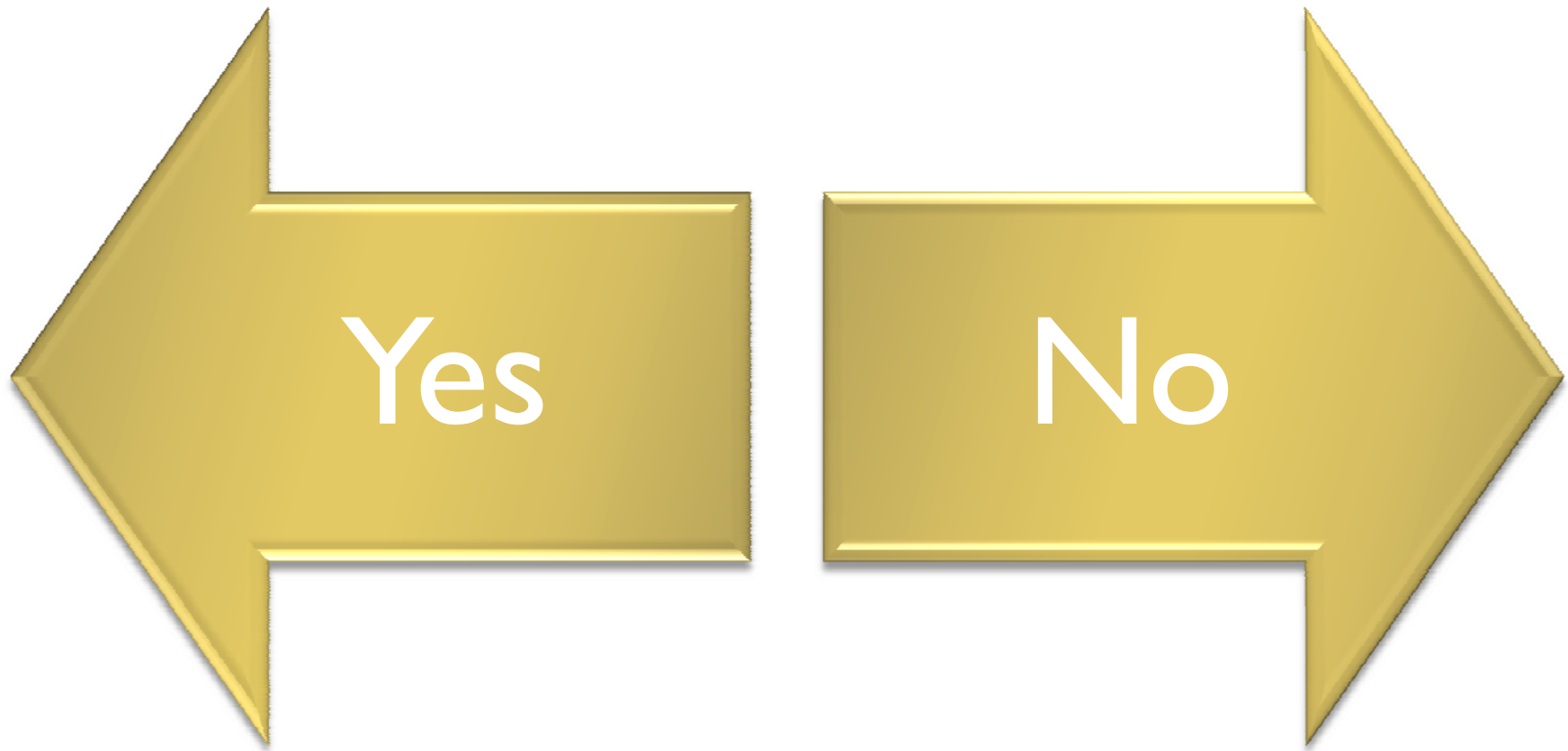


Informed Consent and School Counselor

- ▶ Two Key Points:
- ▶ Minor clients cannot legally give informed consent, only their parents can. They can give assent.
- ▶ Some school districts or school principals have policies that require counselors to obtain parents' permission before beginning counseling students, and others require counselors to seek permission if they see students for more than a specified number of counseling sessions.



Informed Consent and the School Counselor





Ethical Codes: Group Activity

- ▶ Break up into small groups, construct a generic informed consent for group to include in your structure group program.

